

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

THOMAS ZIMMERMAN and  
PATRICIA ZIMMERMAN,

Plaintiffs,

v.

GREG LOGEMANN,  
1<sup>st</sup> RATE MORTGAGE CORP.,  
GRETTA HAUN,  
BOARDWALK REALTY, INC.,

Defendants,

and

COUNTRYWIDE BANK, N.A.,  
AMERICA'S WHOLESALE LENDER,

Defendants and  
Third-Party Plaintiffs,

v.

TRI-COUNTY TITLE & ABSTRACT, LLC,  
and TERRI OSWALD,

Third-Party Defendants.

**PLAINTIFFS' MOTION FOR SANCTIONS  
AGAINST 1<sup>ST</sup> RATE MORTGAGE CORP. FOR  
FAILURE TO COMPLY WITH COURT ORDER  
OF NOVEMBER 9, 2010 COMPELLING  
DISCOVERY RESPONSES**

**Case No. 09-cv-210**

TO: 1<sup>st</sup> Rate Mortgage Corporation  
3159 Voyager Drive  
Green Bay, WI 54311

Plaintiffs, Thomas Zimmerman and Patricia Zimmerman, by their attorneys Mary Catherine Fons and Judy Tomczak, move the Court pursuant to F.R.Civ.P. 37(b) to sanction 1<sup>st</sup> Rate Mortgage Corporation for failing to provide discovery responses pursuant to the Court's Order of November 9, 2010, and to require said Defendant to pay the reasonable expenses incurred, including attorneys' fees, in bringing this Motion.

"Rule 37(b), Federal Rules of Civil Procedure, provides that a District Court may impose sanctions for failure to comply with discovery orders." *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 695, 102 S. Ct. 2099, 2100 (1982); see Fed. R. Civ. P. 37(b). The sanctions available to the Court include striking pleadings, rendering a default judgment, treating

Defendant's failure as a contempt of court, and others. "While fines are not specifically included in the non-exclusive list of sanctions in Rule 37(b)(2), they are among the tools available to trial courts to remedy the harms of discovery violations." *Maynard v. Nygen*, 332 F.3d 462, 470 (7<sup>th</sup> Cir. 2003).

"Civil contempt is characterized by the court's desire to compel obedience to a court order or to compensate the contemnor's adversary for the injuries which result from the non-compliance." *Manez v. Bridgestone Firestone North American Tire, LLC*, 533 F.3d 578, 590 (7<sup>th</sup> Cir. 2008) citing *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9<sup>th</sup> Cir. 1983).

Plaintiff seeks an order: (1) to strike Defendant's Answer and Affirmative Defenses; (2) to extend the time Plaintiffs can engage in discovery from this Defendant until the date of trial; (3) to require Defendant to respond to all outstanding discovery requests in 48 hours; (4) to hold Defendant in civil contempt and order it to pay \$250.00 per day to Plaintiffs for each day Defendant remains in non-compliance with the Court's Order of November 9, 2010; (5) to require Defendant to open its business records to Plaintiffs for inspection with access to computer records provided as well as hard copies of documents; (6) to require Defendant to pay the expenses of this Motion; and (7) such other relief as the Court deems proper.

This Motion is based on the attached Affidavit of Mary Catherine Fons, the Order of this Court dated November 9, 2010 (text only order dated November 9, 2010), and all matters of record.

Dated this 10<sup>th</sup> day of March, 2011.

/s Mary Catherine Fons  
**Mary Catherine Fons, SBN 01017000**  
**Attorney for Plaintiffs**  
FONS LAW OFFICE  
500 South Page Street  
Stoughton, WI 53589-2448  
Phone: 608-873-1270  
Fax: 608-873-0496  
[mfons@chorus.net](mailto:mfons@chorus.net)

**Judy Tomczak, SBN 1028190**  
Attorney for Plaintiffs  
TOMCZAK LAW OFFICE, LLC  
N2761 N. Lake Point Drive  
Lodi, WI 53555-1560  
Phone: 608-513-9601  
*Fax:* 866-594-5864  
[tomczaklaw@charter.net](mailto:tomczaklaw@charter.net)